

1984 February 2

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

POLYVIOS KOSMAS.

Applicant.

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 483/82).

Administrative Law—Administrative acts or decisions—Reasoning—Due reasoning—Lack of, by itself a sufficient ground for the annulment of an administrative act or decision—Promotions to post of Senior Technician, Assistant Foreman in the Electricity Authority of Cyprus—No reasons given for disregarding seniority of applicant—And Counsel for respondent admitting that sub
5 *judice decision is not reasoned—Annulled for lack of due reasoning.*

10 The applicant in this recourse challenged the validity of the decision of the respondent Authority to promote the interested parties to the post of Senior Technician, Assistant Foreman, instead of himself. One of the grounds of law of the recourse was that no cogent reasons were given in the sub judice decision* why the seniority of the applicant over some of the interested
15 parties was ignored.

20 On the date of the hearing of the recourse counsel for the respondent stated that when considering the facts of the case for the purpose of preparing his written address, he came to the decision that he could not support the administrative decision challenged by this recourse, because there had been some procedural error and, especially a failure on the part of the Authority to give reasons for its decision.

* The sub judice decision is quoted at p. 119 post.

Held, that lack of due reasoning is by itself a sufficient ground for the annulment of an administrative act or decision; that in the light of the material before this Court and the admission of counsel for the respondent, and bearing in mind the above principles of administrative law, this Court has reached the conclusion that the sub judice decision has to be annulled on the ground of lack of due reasoning. 5

Sub judice decision annulled.

Cases referred to:

Fournia Ltd. v. Republic (1983) 3 C.L.R. 262 at pp. 275, 276; 10
Karageorghis v. Republic (1982) 3 C.L.R. 435.

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Senior Technician, Assistant Foreman in preference and instead of the applicant. 15

K. Koushios, for the applicant.

G. Cacoyiannis, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by this recourse challenges the decision of the respondent Authority whereby Andreas Nicolaou, Kendeas Hartoshia, Savvas Stavrou, Costas Evangelou and Costas Nearchou, the interested parties in this recourse were promoted to the post of Senior Technician, Assistant Foreman, instead of the applicant. 20

The applicant has been in the employment of the respondent since the 28th January, 1963 and he is now holding the post of Chargehand. 25

On 10.3.1982 there was a number of vacancies in the post of Senior Technician/Assistant Foreman with the respondent Authority. The applicant was amongst 28 candidates who applied for appointment to such post. The Joint Advisory Committee of Selection for Promotions of the respondent met in June, 1982, considered the applications which were submitted and selected 8 of the candidates, amongst whom the applicant, whose names it included in a list which it submitted to the Board 35

of the Authority with its recommendation that they were the most suitable candidates for promotion. The submission was examined by the Sub-Committee of the respondent on Personnel Matters composed by the Chairman of the respondent Authority, two members of the Board and the General Manager, at its meeting of 7.7.1982, which, after consideration of the recommendations of the Joint Advisory Committee and examination of all applications submitted, decided to recommend to the Board of the Authority, the five interested parties for promotion to the existing vacancies. The Board of the Authority met on 27.7.1982 and studied the report and the recommendations of the Joint Advisory Committee for Promotions. According to the minutes of such meeting (annexed to the opposition as exhibit 4) the Board:

“studied the report of the Joint Advisory Committee for promotions dated 29.6.1982 for the filling of a number of vacant posts.

After an exchange of views and after the members examined all applications which were submitted in response to the notification for vacancies No. 3/82 and after having taken into consideration all criteria for promotion, that is, experience, merit, ability, years of service in the Authority, qualifications (in relation to the existing relevant schemes of service), conduct, age, general performance, and having compared all the aforesaid criteria for promotion to the same criteria for promotion of those selected for promotion and also the recommendations of the Heads of the Departments and the Chief Engineer/General Manager, and the joint submission of the Joint Advisory Committee of Selection for Promotions for the filling of the said posts and the recommendations of the Sub-Committee of the Authority on Personnel Matters, on the proposal of the vice-chairman which was seconded by Mr. Cl. Papadopoulos.

DECIDED UNANIMOUSLY

to promote the following employees for the filling of the posts which have been published by Notification of Vacancies No. 3/82 as from the date appearing opposite the name of each one of them

and the names of the five interested parties are then mentioned with the date of their promotion as the 1st August, 1982.

When the applicant came to know about such promotions, he wrote a letter on 18.9.1982 addressed to the General Manager of the respondent, protesting against such promotions and asking for the reasons of his non-promotion. 5

In reply to such letter the Personnel Manager sent to him the following letter dated 28th September, 1982:

“With reference to your letter dated 18th September, 1982, you are hereby informed that in the same way as in the case of all promotions, the decision was taken after the procedure contemplated by the Collective Agreement and the regulations for the functioning of the Joint Advisory Committee of Selection for Promotions was followed”. 10

As a result, the applicant filed the present recourse contending that the sub judice decision is null and void and of no legal effect whatsoever. The grounds of law on which the recourse is based are that the respondent failed to discharge its duty under the law in selecting the most suitable candidates, that it abused its discretionary powers, that it was influenced by extraneous matters repugnant to the Constitution and the basic principles of administrative law and finally, that the sub judice decision is lacking due reasoning. 15 20

The respondent opposed the application and the grounds of law set out in the opposition are that the respondent acted lawfully and in good faith in the proper discharge of its duties and the exercise of its discretion in accordance with the principles of administrative law and the needs of the service; that the Authority acted within the ambit of its powers; that there was no discrimination and that the sub judice decision is duly reasoned. It is also contended that no valid reasons are disclosed in the recourse for the annulment of the sub judice decision. 25 30

In expounding in his grounds of law, counsel for the applicant in his written address contended that though the applicant was strikingly superior in merit and qualifications from the interested parties and senior to some of them, no reasons are given in the sub judice decision why the interested parties were promoted in preference to him. Also, assuming that merit and qualifications 35

were equal, no cogent reasons are given why his seniority over some of the interested parties was ignored. In concluding, counsel contended, the decision was taken in abuse of powers.

5 On the date of the hearing of this recourse counsel for the respondent stated that when considering the facts of the case for the purpose of preparing his written address, he came to the decision that he could not support the administrative decision challenged by this recourse, because there had been some procedural error and, especially, a failure on the part of the Authority
10 to give reasons for its decision.

It has been held time and again by this Court, following in this respect the jurisprudence in Greece and the decisions of the Greek Council of State, that lack of due reasoning is by itself a sufficient ground for the annulment of an administrative
15 act or decision. (See, inter alia, *Fournia Ltd. v. The Republic* (1983) 3 C.L.R. 262, 275, 276 and the cases referred to therein, *Karageorghis v. The Republic* (1982) 3 C.L.R. 435).

In the light of the material before me and the admission of counsel for the respondent, and bearing in mind the above
20 principles of administrative law, I have reached the conclusion that the sub judice decision has to be annulled on the ground of lack of due reasoning.

In the result, the sub judice decision is annulled, but in the circumstances of the case I make no order for costs.

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Sub judice decision annulled. No order as to costs.